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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,165	03/25/2004	Pekka Kuure	KOLS.101PA	6814

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EXAMINER	
PEREZ, JULIO R	
ART UNIT	PAPER NUMBER
2617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/809,165	KUURE ET AL.	
	Examiner	Art Unit	
	Julio R. Perez	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/25/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macaulay et al. (US006188886B1) in view of Smith (US 20050123108A1).

Regarding claims 1, 9, Macaulay discloses a communication method in a wireless telecommunications system including a network infrastructure connected to at least one server for providing data streaming communication where a data stream is communicated from the server to a mobile terminal over a radio interface provided by the network infrastructure, the method including: receiving a communication connection request message from the network infrastructure in the mobile terminal (col. 2, lines 35-39, teaches offering to display a voice call, i.e., a communication connection request); indicating reception of the communication connection request to a user of the mobile terminal (col. 2, lines 34-44, col. 6, lines 12-22. Note that col. 2, lines 34-44 teaches displaying the voice call on the phone handset, which reads on indicating to a user of communication reception); receiving in the mobile terminal a first mode change command generated by the user (col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teaches establishing a voice path in the event that the user decides to respond, i.e., change to the answering mode); requesting for suspension of the data streaming

communication on the basis of the first mode change command (col.2, lines 34-44, 64-67-col. 3, lines 1-12, teach connecting a voice call while holding on the transmission of data) ; and accepting the communication connection on the basis of the first mode change command (col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teach acceptance of the voice call, thus, accepting communication connection), **but is silent on** performing data streaming communication to the mobile terminal.

Smith teaches resuming to data session (i.e., accessing the Internet) reception while a telephone call is in progress or outgoing (pars. 17-18, which reads on receiving data streaming).

It would have been obvious to one skilled in the art at the time of the invention to modify Macaulay, such that the mobile terminal receives data streams, to provide means for maintaining a data session active while a phone conversation is in progress.

Regarding claims 2, 10, the combination of Macaulay and Smith discloses the method of claim 1, generating a transmission suspension message on the basis of the first mode change command (Smith, Figure 4, # 420, pars. 33-34, teaches placing the data session on hold), the transmission suspension message informing the server to suspend transmission of the data stream (Smith, pars. 29-30, 33-35); and transmitting the transmission suspension message to the server over the radio interface provided by the network infrastructure (Smith, Figure 3, #'s 330, 340, 350, 360, pars. 30, 33-35) .

Regarding claims 3, 11, the combination of Macaulay and Smith discloses of claim 1, further including: generating a communication connection acceptance message on the basis of the first mode change command (Macaulay col. 2, lines 35-39, col.

3,lines 1-5, col. 6, lines 15-19); requesting for suspension of the data streaming communication on the basis of the communication connection acceptance message (Macaulay, col. 3, lines 36-47, teach restoring to data session while in conversation mode, thus, indication of data session being suspended); and transmitting the communication connection acceptance message to the network infrastructure (Macaulay col. 2, lines 35-39).

Regarding claims 4, 12, the combination of Macaulay and Smith discloses of claim 1, further generating a transmission suspension message on the basis of the first mode change command, the transmission suspension message informing the server to suspend transmission of the data stream (Macaulay col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19; transmitting the transmission suspension message to the server over the radio interface provided by the network infrastructure (Macaulay, col. 3, lines 36-47; and accepting the communication connection on the basis of the transmission suspension message (Macaulay, col. 2, lines 35-39).

Regarding claims 5, 13, the combination of Macaulay and Smith discloses of claim 1, further generating a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication (Macaulay, col.2, lines 34-44, 64-67-col. 3, lines 1-12); and transmitting the connection suspension message to the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5).

Regarding claims 6,14, the combination of Macaulay and Smith discloses of claim 1, receiving second mode change command generated by the user (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teach the user displaying and accepting or ignoring the connection); releasing the communication connection on the basis of the second mode change command (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5); and requesting for continuation of the data streaming communication on the basis of the second mode change command (Macaulay, col. 3, lines 6-8, teach restoring the portable to data communication mode).

Regarding claims 7, 15, the combination of Macaulay and Smith discloses of claim 1, further receiving a communication connection release message from the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5); indicating the reception of the communication connection release message to the user (col. 3,lines 1-5, col. 6, lines 15-19); receiving in the mobile terminal a third mode change command generated by the user (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19); requesting for continuation of the data streaming communication on the basis of the third mode change command (Macaulay, col. 3, lines 6-8, teach restoring the portable to data communication mode).

Regarding claims 8, 16, the combination of Macaulay and Smith discloses of claim 1, further receiving a communication connection release message from the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19); requesting for continuation of the data streaming communication on the basis of the connection release message (Macaulay, col. 3, lines 6-8).

Regarding claim 17, Macaulay discloses executing a computer process in a wireless telecommunications system including a network infrastructure connected to at least one server for providing services for mobile terminals by using the network infrastructure, the computer process including: receiving a communication connection request message from the network infrastructure in the mobile terminal (col. 2, lines 35-39, teaches offering to display a voice call, i.e., a communication connection request); indicating reception of the communication connection request to a user of the mobile terminal (col. 2, lines 34-44, col. 6, lines 12-22. Note that col. 2, lines 34-44 teaches displaying the voice call on the phone handset, which reads on indicating to a user of communication reception); receiving in the mobile terminal a first mode change command generated by the user (col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teaches establishing a voice path in the event that the user decides to respond, i.e., change to the answering mode); requesting for suspension of the data streaming communication on the basis of the first mode change command (col.2, lines 34-44, 64-67-col. 3, lines 1-12, teach connecting a voice call while holding on the transmission of data); and accepting the communication connection on the basis of the first mode change command (col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teach acceptance of the voice call, thus, accepting communication connection), **but is silent on** performing a data streaming communication to the mobile terminal.

Smith teaches resuming to data session (i.e., accessing the Internet) reception while a telephone call is in progress or outgoing (pars. 17-18, which reads on receiving data streaming).

It would have been obvious to one skilled in the art at the time of the invention to modify Macaulay, such that the mobile terminal receives data streams, to provide means for maintaining a data session active while a phone conversation is in progress.

Regarding claim 18, the combination of Macaulay and Smith discloses claim 17, further generating a transmission suspension message on the basis of the first mode change command, the transmission suspension message informing the server to suspend transmission of the data stream (Smith, Figure 4, # 420, pars. 33-34, teaches placing the data session on hold); and transmitting the transmission suspension message to the server over the radio interface provided by the network infrastructure (Smith, Figure 3, #'s 330, 340, 350, 360, pars. 30, 33-35).

Regarding claim 19, the combination of Macaulay and Smith discloses claim 17, generating a communication connection acceptance message on the basis of the first mode change command (Macaulay col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19); requesting for suspension of the data streaming communication on the basis of the communication connection acceptance message (Macaulay, col. 3, lines 36-47, teach restoring to data session while in conversation mode, thus, indication of data session being suspended); and transmitting the communication connection acceptance message to the network infrastructure (Macaulay col. 2, lines 35-39).

Regarding claim 20, the combination of Macaulay and Smith discloses claim 17, further generating a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication

(Macaulay, col.2, lines 34-44, 64-67-col. 3, lines 1-12); and transmitting the connection suspension message to the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5).

Regarding claim 21, the combination of Macaulay and Smith discloses claim 17, wherein the computer process further includes: generating a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication; and transmitting the connection suspension message to the network infrastructure.

Regarding claim 22, the combination of Macaulay and Smith discloses claim 17, wherein receiving second mode change command generated by the user (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19, teach the user displaying and accepting or ignoring the connection); releasing the communication connection on the basis of the second mode change command (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5); and requesting for continuation of the data streaming communication on the basis of the second mode change command (Macaulay, col. 3, lines 6-8, teach restoring the portable to data communication mode).

Regarding claim 23, the combination of Macaulay and Smith discloses claim 17, further receiving a communication connection release message from the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5); indicating the reception of the communication connection release message to the user (col. 3,lines 1-5, col. 6, lines 15-19); receiving in the mobile terminal a third mode change command generated

by the user (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19); requesting for continuation of the data streaming communication on the basis of the third mode change command (Macaulay, col. 3, lines 6-8, teach restoring the portable to data communication mode).

Regarding claim 24, the combination of Macaulay and Smith discloses claim 17, further receiving a communication connection release message from the network infrastructure (Macaulay, col. 2, lines 35-39, col. 3,lines 1-5, col. 6, lines 15-19); requesting for continuation of the data streaming communication on the basis of the connection release message (Macaulay, col. 3, lines 6-8).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Regarding claim 17-24, the claimed invention is directed to non-statutory subject matter.

> **>Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

MPEP 2106.1.

The "computer program" is simply a computer program. Further the claim does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible result. Furthermore, the claimed limitation does not discuss any issues regarding a memory for storing the computer program product or instructions, which is encoded on a computer readable medium. Therefore, the claim is unpatentable over 35 USC 101.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio R. Perez whose telephone number is (571) 272-7846. The examiner can normally be reached on 10:30 - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William G. Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Julio R Perez
Examiner
Art Unit 2617

3/26/07

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